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TO: Each Supervisor

FROM: James A. Noyes
Director of Public Works

FINAL REPORT - BOARD MOTION OF JANUARY 21, 2003, SYNOPSIS 55 FEASIBILITY OF ORDINANCE REQUIRING BACKGROUND CHECKS FOR STUDENT PILOTS

As requested by your Board's motion on January 21, 2003, staff from our Aviation Division and County Counsel have completed an investigation on the feasibility of instituting an ordinance requiring identification and criminal background checks of potential student pilots by the County Sheriff before student pilots can be allowed to fly from County-owned airports. Due to the substantial amount of research necessary to determine the feasibility to pursue this type of ordinance, on February 20, 2003, we and County Counsel requested an additional 45 days to prepare this final report.

SUMMARY

We have determined that the adoption of an ordinance subjecting prospective student pilots to identification verification and criminal background checks would raise issues of preemption by federal law, inconsistency with regulations applied to other local airports, and negative economic impacts to the 11 flight schools operating on our airports.

ANALYSIS

Federal Law. On November 19, 2001, Congress enacted the Aviation and Transportation Security Act. Section 113 of the Act requires flight schools and other flight instructors to submit identification of non-U.S. citizens seeking flight training for aircraft with a takeoff weight of 12,500 pounds or more to the Attorney General, so that the Department of Justice may conduct a security assessment of any risk posed by the

individual. The federal legislation does not explain why it limited its application to training in aircraft of 12,500+ pounds takeoff weight. Arguably, federal legislators did not perceive a significant security threat for flight training in aircraft under that limit.

Proposed Ordinance. The proposed ordinance in question would attempt to regulate aviation security as it relates to aircraft with a takeoff weight of less than 12,500 pounds. The ordinance would require flight schools and independent flight instructors to submit the names of prospective students to the County for identity verification and criminal background checks.

San Mateo County's Ordinance. The Board's motion makes reference to an ordinance adopted by San Mateo County requiring identification verification of student pilots at the County's two airports. We understand that the ordinance has not yet been legally challenged, but that the regional office of the Federal Aviation Administration (FAA) believes that the ordinance violates federal law. The FAA indicates that it intends to demand that the ordinance be rescinded and if the County fails to do so it could lose future FAA grant funding.

Opinion of Flight School Operators. Our Aviation Division staff discussed this issue with owners of several of the flight schools located on our five airports. The flight school operators agreed that there is a need for improved identification, not only for student pilots, but for pilots in general. Currently, pilot licenses are printed on paper similar to a business card and include the holder's name, physical description (height, weight, etc.) and type of rating (student, private, commercial, etc.), but no picture. The flight school operators require a picture identification prior to releasing an aircraft to any person. The flight school operators felt that a more sophisticated, tamper-proof pilot license format is needed.

When asked if the proposed ordinance might affect their business, they were unanimous in their response that if there were any delay in allowing a new student to begin lessons, the student would likely go to a flight school at a non-County airport. Besides our five County airports, there are seven other airports in the County that have flight schools and an additional three airports with schools in adjacent counties within one to seven miles of the County boundary. San Mateo County only has two general aviation airports, both owned by the County.

With all the flight schools reporting a dramatic downturn in student activity since the events of 9/11, some of those questioned their school's ability to survive if the ordinance is enacted. The flight school operators conceded that a uniform federal requirement for

student pilot background checks or identification verification at all flight schools could be accommodated because their competitors would be subject to the same rules.

Opinion of FAA Inspectors. Aviation Division staff also met with personnel from the FAA Flight Standards Division, who oversee flight school operations. These FAA field inspectors visit flight schools and encourage operators to implement several security enhancements the FAA has developed, including the establishment of a policy that the student pilot obtain a medical certificate prior to beginning flight lessons. They also indicated that since January 2002, the name of any applicant for a pilot certificate, including student licenses, is automatically checked against a list of names maintained and updated by the Transportation Security Administration (TSA) and the Department of Justice. They explained that student pilots must always fly with a certified flight instructor until the instructor determines the student is ready to begin solo flight. The students are not allowed to fly solo until they have completed a flight physical performed by an FAA Certified Medical Examiner who also issues the medical certificate/student pilot license. At that time, a copy of the license is e-mailed to the FAA and simultaneously to the TSA. The FAA staff reported that the Federal Bureau of Investigation, the Immigration and Naturalization Service, and other law enforcement agencies have access to the data and review it continually.

Staff asked the FAA inspectors their opinion about the proposed County ordinance. The inspectors felt that implementation of the ordinance would impede the FAA's goal of providing a seamless regulatory framework for implementing meaningful and effective security measures at general aviation airports across the country.

Opinion of County's Aviation Commission. At the last two County Aviation Commission meetings, the Commission members felt strongly that safety and security of the general aviation environment is of the utmost importance and that a uniform system for aviation security, under the sole control of, and regulated by, the federal government is the preferred approach.

Possible Legal Implications. The Supremacy Clause of the United States Constitution makes federal law the law of the land. Under what is commonly known as the "preemption doctrine," federal law preempts a state or local law that: 1. conflicts with federal law or 2. intrudes into an area of law significantly regulated by federal law (even if the state or local law complements the federal law).

The Federal Aviation and Transportation Security Act requires identification verification for flight training on aircraft with a takeoff weight of 12,500 pounds or more. The power to regulate lighter aircraft was within the power of the federal legislators, but they chose

not to do so, presumably because they did not perceive a significant security threat for flight training in the lighter aircraft. If this is so, then the case for preemption is strong because the legislators would have consciously not regulated lighter aircraft. Therefore, a state or local law regulating lighter aircraft would likely be judged invalid because it would be preempted by the Federal Act which had occupied this area of law.

The weight of authority suggests that state and local governments do not have recognized roles in air safety, and that Congress probably intended this concern to be the exclusive domain of the federal government. While the Aviation and Transportation Security Act is too recent for much judicial scrutiny, federal courts have stated that one of the prime purposes of the Federal Aviation Act of 1958 was the establishment of a single uniform system of regulation in the area of air safety. Case law is replete with quotations to the effect that aviation safety is impliedly preempted by pervasive federal regulation in the field.

It is also likely that the courts will give significant weight to the FAA's position on whether a particular state or local law is preempted by the federal regulatory scheme. With that in mind, last month County Counsel sent a letter to the Acting Chief Counsel of the FAA in Washington, in an attempt to discern that agency's reaction to a possible Los Angeles County ordinance imposing identity and criminal background checks of flight students for aircraft with takeoff weight less than 12,500 pounds. An answer has yet to be received. An informal discussion with the FAA's counsel for the Western Pacific Region did take place, and that person dearly voiced his belief that federal law would preempt such an ordinance.

TAG:hz
STUDENTPILOTSBACKGROUNDCHECKS/A-2

cc: Chief Administrative Office
Executive Office
County Counsel